

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Application of)
Desert Broadcasting Corporation) MM Docket No. 96-221
For Renewal of License of) File No. BRH-910327YD
Station KZAL(FM),)
Desert Center, California)
To: Hon. John M. Frysiak
Administrative Law Judge

PETITION FOR RELIEF UNDER THE DISTRESS SALE POLICY

Desert Broadcasting Corporation ("Desert"), applicant for renewal of KZAL-FM, Desert Center, California ("the Station") and Worldwide Multi-Media Broadcasting Company, A California Corporation ("Worldwide"), respectfully request the Presiding Judge to issue an order ("the Order") which would:

1. permit Worldwide, the proposed purchase of the Station under the Distress Sale Policy, to appear in this proceeding for the limited purpose of pursuing distress sale relief; 1/
2. determine that the Form 314 assignment of license application filed this date ("the Assignment Application") by which Desert proposes to assign the broadcast authorizations and assets of the Station qualifies for treatment under the Distress Sale Policy; and
3. terminate this proceeding within ten days following consummation of the sale of the station from Desert to Worldwide. 2/

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- 1/ For this limited purpose, the Presiding Judge is respectfully requested to note the appearance of David Honig as counsel for Worldwide.
 - 2/ Yesterday, February 13, 1997, Desert filed a Motion to Suspend Procedural Dates.

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The Station resumed operation on February 7, 1997, thus meeting the condition that the station resume operation within one year after the President signed the Telecommunications Act of 1996. See Desert Broadcasting Corporation (HDO), 11 FCC Rcd 14860, 14863 ¶10 (1996).^{3/} Thus, there are no impediments to consideration of distress sale relief.

The Distress Sale Policy is set out in Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC2d 979 (1978) ("Policy Statement").^{4/} The goals of the Policy Statement were to produce "a more diverse selection of programming" and to "enhance the diversity of control of a limited resource, the spectrum." Id. at 981.^{5/} Under the Policy Statement, distress sale relief may be

^{3/} Worldwide loaned Desert the funds required to return the Station to the air, and Worldwide is operating the Station pursuant to an LMA. A copy of the LMA Agreement has been provided to the Bureau.

^{4/} Before the Policy Statement was issued, "distress sales" -- that is, the disposition of a hearing through the sale of the station rather than through the resolution of the hearing issues -- were generally permitted only where the licensee was bankrupt or physically or mentally disabled. Policy Statement, 68 FCC2d at 983. See, e.g., Second Thursday Corporation, 22 FCC2d 515, recon. granted, 25 FCC2d 112 (1970).

^{5/} In Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 567 (1990) ("Metro"), the Court concluded that "the interest in enhancing broadcast diversity is, at the very least, an important governmental objective and is therefore a sufficient basis for the Commission's minority ownership policies" (emphasis in original). In Adarand Constructors, Inc. v. Peña, 115 S.Ct. 2097, 2113 (1995) ("Adarand"), the Court held that racial classifications imposed by federal actors must be "narrowly tailored measures that further compelling governmental interests." The Commission has determined that in Adarand, "the Court rejected its earlier legal analysis in Metro...which had applied the intermediate scrutiny standard of judicial review to the Commission's distress sale" policy. Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (NOI), 11 FCC Rcd 6280, 6309 (1996).

granted where the parties demonstrate "how the sale would further the goals upon which we are today basing the extension of our distress sale policy."

Worldwide is a qualified minority-controlled buyer under the Distress Sale Policy. It is a well established San Diego-based radio and television production company, operated and 100% owned by Frank Jordan. Neither Worldwide nor Mr. Jordan, an African American broadcast pioneer, has other media interests.

Mr. Jordan has a long record of community service, having served for many years as the President of the San Diego Branch of the NAACP. Since 1995, Mr. Jordan has served as the President of the California State Conference of Branches of the NAACP. He will draw on his extensive background in the civil rights movement and in the media industry to ensure that the Station is used as a training ground for minorities seeking to enter the industry, and

5/ [continued from p. 2]

However, as noted above, the Metro Court recognized that the Distress Sale Policy "at the very least" satisfies the intermediate scrutiny standard. No court has held that the Distress Sale Policy would not withstand evaluation under strict scrutiny. Furthermore, in its brief in the companion case to Metro which involved the Distress Sale Policy, the Commission expressly contended that "[p]romoting diversity in broadcast programming is a compelling governmental interest that is an appropriate basis for a race-conscious governmental policy" and further contended that "[t]he Distress Sale Policy has been narrowly tailored to achieve its intended goal." Brief for Federal Communications Commission in Astroline Communications Co., Limited Partnership v. Shurberg Broadcasting of Hartford, Inc., et al., No. 89-700 (Supreme Court, October Term, 1989) ("Astroline Brief"). The Astroline Brief is the most recent statement by the Commission of its opinion of the constitutionality of the Distress Sale Policy.

Consequently, the Presiding Judge may grant this Petition consistent with the Commission's view of the constitutionality of the Distress Sale Policy.

to ensure that the Station provides program service in the public interest, including expressions of the viewpoints of minorities in central California.

Disposition of this case through the Distress Sale Policy will preclude the need to hold a time consuming and expensive hearing, and ensure the long-term operation of the Station in the public interest.

Desert proposes to sell the Station to Worldwide for \$50,000 in cash.^{6/} The sale price under the Distress Sale Policy cannot exceed 75% of the station's fair market value. Lee Broadcasting Corp., 47 RR2d 316, 317 (1980). Fair market value may be determined by the average of two appraisals, one submitted by the buyer's appraiser and the other by the seller's appraiser, provided that the appraisals differ by less than 5%. Id. at 318. Desert and Worldwide will promptly supplement this Petition with the necessary appraisals in order to document that the sale price is less than 75% of the Station's fair market value.

Accordingly, all of the requirements for distress sale relief will be met by the proposed transaction, and the relief sought in this Petition should be granted. Recognizing that "[a]pplications by parties seeking relief under our...distress sale polic[y] can be expected to receive expeditious processing",^{7/} Desert and Worldwide respectfully request expedited treatment of this Petition.

^{6/} Worldwide has placed \$5,000 of the purchase price in escrow with Desert's counsel.

^{7/} Policy Statement, 68 FCC2d at 983.

Respectfully submitted,

Lee W. Shubert/dh

Lee W. Shubert
Haley, Bader & Potts
4350 North Fairfax Drive #900
Arlington, VA 22203-1633
(703) 841-0606

Counsel for Desert Broadcasting
Corporation

David Honig

David Honig
3636 16th Street N.W. #B-366
Washington, D.C. 20010
(202) 332-7005

Counsel for Worldwide Multi-Media
Broadcasting Company, A California
Corporation

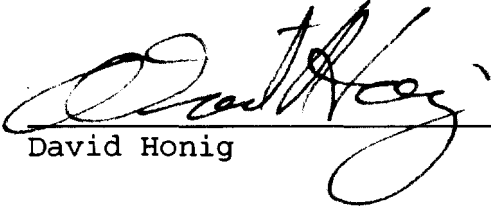
February 14, 1997

CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 14th day of February, 1997 caused a copy of the foregoing "Petition for Relief under the Distress Sale Policy" to be delivered by hand to the following:

Hon., John M. Frysiak
Administrative Law Judge
Federal Communications Commission
2000 L Street N.W. #223
Washington, D.C. 20554

James Shook, Esq.
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street N.W. #7212
Washington, DC 20554


David Honig